"this state of mind is not to be presumed without evidence, nor does it usually occur without some premonitory symptons indicating its approach."

Gentlemen of the jury, we say to you, as the result of our reflections on this branch of the subject, that if the prisoner was actuated by an irresistible inclination to kill, and was utterly unable to control his will or subjugate his intellect, and was *not* actuated by anger, jealousy, revenge, and kindred evil passions, he is entitled to an acquittal, provided the jury believe that the state of mind now referred to has been proven to have existed, without doubt, and to their satisfaction.

The judge then reviewed at length the evidence, and called the attention of the jury to the act of Assembly regulating the degrees of murder, and also to that act which requires a jury, when the defence is insanity, to say so if they so believe, and also to find if the prisoner is acquitted on that ground; and, after calling upon the jury in the most solemn manner to discharge their whole duty, he committed the prisoner to their charge, saying: "If the prisoner, by reason of mental infirmity, is not a responsible being, acquit him; but if you believe him to be guilty, in that event consign him to that doom which is the direct result of his own act."

The prisoner was acquitted.

In the District Court of the United States, Wisconsin District. In Equity.

THE CLEVELAND INSURANCE COMPANY *vs.* GEORGE REED AND JULIET S. REED HIS WIFE, JAMES H. ROGERS, AND THE MILWAUKEE AND MISSISSIPPI RAILROAD COMPANY.

1. Where a power of attorney is given by three tenants in common of village lots, for the sale, leasing, and absolute disposal of all or any part of their interest in said lots, and the attorney conveys the share of one of the principals, and takes a conveyance back, and then mortgages the same interest for money loaned, all at the same time, the mortgage is, in equity, the mortgage of the principal.

2. A purchaser under decrees of foreclosure of prior mortgages cannot take advantage of the want of power of the attorney; but he can inquire into the true consideration of the mortgage.

3. Usury must be specially pleaded, or specifically set forth on the record, and supported by evidence, or the court will not inquire into it.

4. The statute limiting suits in chancery to ten years, should be applied to a suit to foreclose a mortgage against a purchaser under prior mortgages, brought seventeen years after the mortgage debt was payable, the mortgage given, and the mortgage debt payable before the statute took effect—particularly when the mortgagee had notice within two years after the sale under the prior mortgages, and that the purchaser was in possession of the premises claiming title.

5. Without such a statute, equity would not disturb the possession or title of such a purchaser, as the demand is stale; and there must be conscience, good faith, and reasonable diligence to call into action the powers of a court of equity.

6. *Quere.*—Whether by analogy to the statutes of the State limiting the time for the redemption of lands sold for debt, a subsequent mortgagee, not a party to a bill of a prior mortgagee to foreclose, should maintain a bill in equity to redeem after two years, against a purchaser under a decree on the prior mortgage?

The opinion of the court, in which the facts are sufficiently set forth, was delivered by

MILLER, J.—It is set forth in the bill, that on the tenth day of February, 1837, George Reed made, and delivered to complainant, three promissory notes—one for $7,250, payable in one year; one for $7,500, payable in eighteen months; one for $7,250, payable in two years, with interest after one year—amounting to $22,000. And that said Reed and wife, to secure the payment of said debt, did, at the same time, execute and deliver to complainant a mortgage of certain lots and lands, described as "being twenty acres of land, situate, lying and being in the town and county of Milwaukee and Territory of Wisconsin, equal and undivided, in all those pieces or parcels of land, known as Finch's Addition to the town of Milwaukee, after excepting blocks numbered fifteen (15), sixteen (16), twenty-one (21), and twenty-eight (28); also, lots numbered five (5) and ten (10) in block numbered twenty-nine (29); lot numbered five (5) block numbered thirty-six (36), and lots numbered four (4) and five (5) in block numbered forty-four (44), as designated in the recorded plat of said addition. Said twenty acres subject to

all streets and alleys laid out in said addition, and all legal highways." "And thirty-six acres of land equal and undivided, in those two tracts of land situate in the county of Milwaukee and Territory of Wisconsin, described as lots numbered two (2) and three (3) in section numbered twenty-one (21), in township numbered seven, north of range numbered twenty-two east in said territory, in the district of lands subject to sale at Milwaukee, containing $180\frac{40}{100}$ acres of land."

The mortgage was recorded in the office of the Register of Deeds for Milwaukee county, on the twenty-seventh of April, 1837.

The plat of Finch's addition was vacated by an act of the legislature, approved March 31st, 1855, and the said parcel of land is now known and described as the south-east quarter of section thirty of township seven, range twenty-two east. The complainant claims to have a lien on an undivided twenty acres of said quarter section. And James H. Rogers and the Milwaukee and Mississippi Railroad Company have, or claim, some interest in the mortgaged premises, as subsequent purchasers, incumbrancers, or otherwise, but subject to complainant's lien. A decree of sale of the mortgaged premises is prayed.

The bill was filed and subpœna issued on the twelfth day of February, 1856.

George Reed filed an answer, in which he admits the execution and delivery of the notes and mortgage, he then being justly indebted to complainant in the sum of $22,000. And he admits that the plat of Finch's Addition was vacated by an act of the Legislature; and that the land is now known and designated as the south-east quarter of section thirty of township seven, range twenty-two east. And by virtue of said mortgage, the complainant has a lien on one undivided twenty acres in said quarter section. And he admits that $22,000, the amount of said notes and mortgage, with interest, still remains due and unpaid. He pleads that, in the month of December, 1842, he was discharged from his debts, under the bankrupt law of the United States, by the Supreme Court of the Territory of Wisconsin.

James H. Rogers, in his answer, states that George Reed never

had any business transactions with complainant, except through one Edmund Clark, who, at the date of the mortgage and ever since, was the president of the corporation. He says that he is the owner in fee simple of the south-east quarter of section 30, of town. 7, range 22; and that he has been in the full and actual possession, as the owner thereof, for the last nineteen years, and fenced and cultivated it. And he has resided in Milwaukee constantly, where he could at all times be found. He pleads that he has been in the actual occupation of the land for more than ten years since the right of action on the mortgage accrued, and before the commencement of this suit; and that the right of action is barred by the statute of limitations of this State, the right of action having accrued more than ten years before the bill was filed.

Rogers further answers, that neither George Reed nor the complainant ever had any title to, or any equitable or just claim to, or lien on said mortgaged premises. That the twenty acres were the property of Curtis Reed. And Edmund Clark was the president of the insurance company, and the owner of the controlling interest in its capital stock. George Reed, as the attorney in fact of Curtis Reed, conveyed said twenty acres undivided to Clark, by a deed bearing date the same day of the mortgage, for the pretended, or nominal consideration of $20,000. And on the same day and time, at Cleveland, Ohio, Clark conveyed the same to George Reed, for the pretended, or nominal consideration of $30,000, who gave to the insurance company the notes and mortgage. These conveyances and mortgage were given in the absence of Curtis Reed, and without his knowledge or consent; and they are all parts of one corrupt and fraudulent transaction, and without any benefit to Curtis Reed;—and that it was a fraud upon Curtis Reed and those claiming, under him, any interest in the land.

Rogers also sets forth in his answer, that Curtis Reed, prior to the execution of the mortgage, gave a mortgage of the land to Nathaniel Finch, for $2,000 and interest; and another mortgage upon his remaining interest of the quarter of section thirty, to B. W. Finch, for $2,266; and both these mortgages were recorded before the mortgage of complainant. Those two mortgages were

assigned to the defendant Rogers, for a valuable consideration, before due, who caused them to be foreclosed by two suits in the Territorial District Court for Milwaukee County. And the land was sold to him, (Rogers) and the sales were confirmed and deeds made.

Rogers further sets up title to the land under a sale by the assignee of George Reed, of his interest in the land.

And he pleads that the conveyances and mortgage were a device to avoid the laws of usury; and that the notes and mortgage are void, as being in violation of the laws of Ohio, or New York, or Wisconsin.

He also claims title by means of sundry tax deeds; and, also, that he has paid the taxes.

He insists that the cause of action is stale, and should not be enforced in equity. He also insists that it is nowhere stated in the bill, that the money as claimed to have been loaned, was part of the capital of the insurance company. And that the charter of the company gives no power to deal in real estate, or to loan money except of the corporate funds. And that the mortgage for that reason is void. And that the company has long since ceased to exist, and is incapable of bringing this suit.

Defendant Rogers disclaims any interest in lots 2 and 3 of section 21, town. 7, range 22, described in the mortgage and bill.

A replication is filed to the answer of James H. Rogers.

The Milwaukee and Mississippi Railroad Company makes no defence.

By the deed of Benoni W. Finch and wife, to Curtis Reed, dated April 23d, 1836, fifteen acres undivided, and also five acres undivided in section 30, town. 7, range 22, were conveyed. And by the deed of Nathaniel Finch and wife, to Curtis Reed, dated April 26th, 1836, seventeen and a half acres undivided in the same section were conveyed.

On the 23d June, 1836, B. W. Finch and wife, and N. Finch and wife, and Curtis Reed, gave to George Reed a power of attorney "to contract for the sale, leasing, and absolute disposal of all *or any* part of our interest in the village lots laid out in the south-east

quarter of section No. 30, in township 7, range 22, in the Territory of Wisconsin, known and designated as Finch's addition; and on such terms as to our said attorney shall seem meet. And also absolutely to sell, convey, or lease, and in our names and behalf to execute all deeds or instruments that may be necessary to carry into full effect the powers hereby conferred; and enable our said attorney to make such disposition of all or any part of our interests in the premises above described, as effectually as we ourselves might do, excepting and reserving unto ourselves, respectively, the sole right of selling the several lots and blocks therein described. And the said attorney is to retain five *per cent.* on the amount of rates which he shall effect, and his expenses to be refunded."

Instead of making sales and leases of lots as contemplated, George Reed, as the attorney of Curtis Reed, under the power, on the 10th February, 1837, in Cleveland, Ohio, conveyed by warranty deed to Edmund Clark, "twenty acres of land undivided of that tract known as Finch's addition to the town of Milwaukee, excepting the lots and blocks excepted in the power of attorney, and as designated in the recorded plat of said addition, and subject to all streets and alleys laid out in said addition, and also subject to all legal highways." And on the same day and at the same place, Edmund Clark conveyed by quit claim deed, the same land with the same description to George Reed, who, with his wife, gave back the mortgage in suit and the notes, to the Cleveland Insurance Company.

Edmund Clark has been examined as a witness, and he testified that these several conveyances and the notes and the mortgage were executed and delivered at the same time, and were the same transaction. It is certain George Reed could not use the power of attorney so as to acquire title to the land adverse to or exclusive of that of his principal, Custis Reed. In equity it is Custis Reed's mortgage, although at law it is George Reed's personal obligation or contract.

Clark testifies that he thinks the mortgage was to be on the same twenty acres that were conveyed to him. The description in the deeds and mortgage, in connection with the power of attorney, and its recital in the deed to Clark, confine the mortgage to Curtis Reed's

twenty acres. This mortgage does not cover any interest of George Reed in that section, which he then held. Everything connected with the transaction excludes the idea that the mortgage is upon any land in that section but Curtis Reed's. The purchase by Rogers of George Reed's interest in the section of land at his assignee's sale, does not affect this mortgage. George Reed's bankruptcy, and the proceedings and the sale under them, have nothing whatever to do with this case, so far as James H. Rogers is concerned. The return of this debt by George Reed, in the schedule annexed to his petition in bankruptcy, cannot in any way affect the interests or rights of Curtis Reed and James H. Rogers in regard to the mortgage or the mortgaged premises.

This mortgage was a security for money loaned, and the insurance company had authority by its charter to take security for money loaned as part of its capital.

Clark testifies, that the amount paid Reed was entered on the books of the company, as paid by it. That he made the arrangement with Reed after consulting some of the directors. He also testifies that eleven thousand dollars, part in cash and part in paper, was the true sum advanced, and was the true consideration. The other eleven thousand was the consideration of a guarantee that the mortgaged premises would be worth the amount, when the notes should become payable; and also a private note of $3,000 was given by Reed as a penalty for the punctual payment of the notes. The notes were given in Ohio, and were made payable in New York, and the mortgage is on land in Wisconsin. The pleadings do not authorize the court to inquire into the subject of usury. They are altogether too indefinite and uncertain. Usury must be specially pleaded, and the evidence must sustain the plea. The whole transaction appears to have been a desperate device of George Reed to make a raise of money, and an unwarrantable scheme of Clark to embarrass a customer. Rogers pleads in his answer, that the transaction was a violation of the usury laws of either the States of Ohio, New York or Wisconsin, and is void. Upon such pleading I shall not examine the subject; nor shall I stop to inquire whether Rogers could plead usury without tendering the amount actually loaned, with interest.

A power to sell lands, usually includes a power to mortgage; but a mortgage under such a power for a greater sum than is actually loaned, may be repudiated by the principal. Curtis Reed might have required the cancellation of the conveyances and mortgage, at all events, upon payment of the sum loaned. But Rogers is a stranger to the transaction, and he cannot make the objection to the validity of the mortgage. He can only cause inquiry to be made of its true consideration, if it is a lien on his land. *Jackson ex dem McCarty* vs. *Van Dolfsen*, 5 Johns. 43; *Childs* vs. *Digby*, 12 Harris, 23.

Rogers became the assignee of the two mortgages of Curtis Reed to the Finches, dated in April, 1836. In pursuance of decrees of the District Court for Milwaukee county, at the suit of Rogers against Curtis Reed, Edmund Clark and others, the mortgaged premises were sold in satisfaction of those mortgages to Rogers: a deed was made to him of the premises, by the master, according to the order of confirmation of the sales. Those mortgages being prior liens, Rogers became the purchaser of the legal title. The mortgage in suit is dated in February, 1837, and is of Curtis Reed's equity of redemption merely. An ejectment would not lie, at the suit of this mortgagee against Rogers, the owner of the legal title. The only remedy of the complainant is by bill in equity for the sale of the mortgaged premises, which is this bill, or for redemption; and the subject matter is of the peculiar and exclusive jurisdiction of a court of equity.

At the date of this mortgage there was no statute limiting suits in equity. An act went into force in the month of July, 1839, that "Bills for relief in case of the existence of a trust not cognizable in the courts of common law, and in all other cases not herein provided for, shall be filed within ten years after the cause thereof shall accrue, and not after." This limitation was continued in the State statutes of 1849, and is now in full force. This mortgage is dated Feb. 10, 1837. The first note is payable in twelve months, the second in eighteen months, and the third in two years. When the act of limitations went into force, the cause of action had accrued. This court will administer statutes of limitation of the State, as

rules of property. I shall proceed to inquire whether the statute is applicable to this case.

This case is one of the "cases not provided for" in the statute. If the word *hereafter* had been inserted in the statute (as in similar laws of some of the States), so that it would read "hereafter accrue," the question would be relieved of doubt. The statute seems to direct the attention to such causes of action as shall accrue, and not to those that had then accrued. The Supreme Court of this State have applied this statute to causes of action accrued at the time of its enactment. *Fullerton* vs. *Spring*, 3 Wis. R. 667; *Parker* vs. *Kane*, 4 id. 1. This statute was copied from the statute of the State of New York. In that State a contrary application of the statute was made in *Williamson* vs. *Ford*, 2 Sandford Ch. Rep. 534, 570, and cases cited. In those cases the general rule is announced, that no statute is to have a retrospect beyond the time of its commencement, and to affect vested rights unless expressly so declared. But in the subsequent case of *Sparr* vs. *Mills*, 3 Barbour's Ch. Rep. 199, it is decided that an equitable claim, upon which a bill in chancery could have been filed, previous to the time when the statute first took effect, and when the complainant was under no legal disability, is barred by the provisions of the statute at the expiration of ten years after the statute went into operation. The statute of the State of Massachusetts, in its general provisions as to claims that shall accrue, is the same as the statutes of New York and of Wisconsin; and a similar application is there made. *Smith* vs. *Morrison*, 22 Pick. Rep. 430. *Sedgewick on Statute of Lim.* 691. The legislature of the State of Mississippi passed an act, in the month of February, 1844, that judgments rendered before the passage of the act, in any other State of the Union, should be barred, unless suit was brought thereon within two years after the passage of the act. In the case of the *Bank of Alabama* vs. *Dalton*, 9 Howard, 522, it is decided by the Supreme Court of the United States that, the act could be pleaded in bar to an action on a judgment rendered in the State of Alabama one year previous to its passage, and that the Constitution of the United States did not prohibit that legislation as a law impairing the obligation of con-

tracts. The time and manner of the operation of statutes of limitations generally depend on the sound discretion of the legislature. Cases, though, may occur, when the provisions of a law may be so unreasonable, as to amount to a denial of right, and call for the interposition of the court. A statute of limitations affects the remedy, not the contract, where a reasonable time is given for bringing suit on existing demands. See also on this subject the opinions of the court in *Jackson* vs. *Lamphire*, 3 Peters, 289; *Sturgis* vs. *Crowninshield*, 4 Wheat. 206; *Bronson* vs. *Kinzie*, 1 Howard, 311; *McCracken* vs. *Haywood*, 2 id. 608; *Lewis* vs. *Lewis*, 7 id. 776; *McElmoyle* vs. *Cohen*, 13 Peters, 312; *Call* vs. *Hagger*, 8 Mass. Rep. 429; *Holyoke* vs. *Haskins*, 5 Pick. 26; *Smith* vs. *Morison*, 22 id. 431; *Morse* vs. *Gould*, 1 Kernan, 281. In *Ross & King* vs. *Duval*, 13 Peters, 45, the court remark:—"It is a sound principle that, when a statute of limitation prescribes the time within which suits shall be brought or an act done, and part of the time has elapsed, effect may be given to the act; and time yet to run being a reasonable part of the whole time, will be considered the limitation in the mind of the legislature in such cases." From a careful examination of the case of *Murray* vs. *Gibson*, 15 Howard, 421, it will appear that that decision does not conflict with the previous decisions of the court. The act of the State of Mississippi, passed in March, 1846, as an amendment to the limitation law of the State, provided that, "no record of any judgment recovered in any court of record without the limits of the State, against any person who was, at the time of the commencement of the suit, on which the judgment is founded, or at the time of the rendition of such judgment, a citizen of this State, shall be received as evidence to charge such citizen, after the expiration of three years from the time of the rendition of such judgment without the limits of this State." The declaration was in debt, on a judgment rendered in the State of Louisiana in the month of November, 1844. By the literal terms of the act, the rights of a judgment creditor seem to be made dependent, not on his diligence in the institution or prosecution of his suit, but upon the trial of the action on his judgment, which is an event over which he can have no control. The peculiar

language of the act, if taken in its literal acceptation, might suggest a serious doubt as to the compatibility of its provision, with the principles of common right, or with the federal constitution. For these reasons the courts construed the law to relate to the time of bringing the suit and not to the time of offering the record in evidence at the trial; and also confined its operation to judgments rendered in other States after its date. In addition to these reasons the law of the same State as then existing, and on which the case of the *Bank of Alabama* vs. *Dalton*, was ruled, was applicable to the case of *Murray* vs. *Gibson*, and would have barred it if pleaded. The court applied the law to judgments rendered after its date, to prevent the injustice intended by the legislature, of excluding judgment records at the trial. The court remark—"That laws should be so construed as not to allow a retroactive operation, where this is not required by express command, or by necessary, or unavoidable implication. Especially should this rule of interpretation prevail, when the effect and operation are designed, apart from the intrinsic merits of the rights of parties, to restrict the operation of those rights."

This bill was filed nineteen years after the date of the mortgage; seventeen years after the whole cause of action had accrued; and sixteen years and five months after the statute of limitations went into force. The complainant was under no legal disability, and might have brought suit before the ten years prescribed by the law had expired. I am of the opinion that this case should be considered as barred by the statute; but it is not essential to the proper disposition of the case, that the bill be dismissed on this ground.

In the year 1840 the sales to Rogers, in foreclosure of the Finch mortgages, were confirmed, and deeds were executed and delivered, when he went into possession. Clark testifies that, "I think I first began to look after this real estate in 1841 or '42. We got a man, who was going up there, to look into it, and he came back with rather a poor story. I first learned that James H. Rogers was in possession of the property ten years ago, perhaps more. I wrote to some gentlemen in Milwaukee, and they wrote me that Rogers was in possession, claiming title. The information which John W. Allen

gave us, who we requested to look after our interests in Milwaukee, and who went there, was, that the thirty-six acres embraced in the mortgage had been foreclosed and sold on a previous mortgage, and that the twenty acres in Finch's addition embraced in the same mortgage, had been sold at several tax sales, and that it was not then valued at over ten dollars per acre. This statement was made in 1841 or 1842. This Mr. Allen was the first President and a stockholder in the Cleveland Insurance Company." Rogers has continued in actual possession, and has paid the taxes mostly by suffering the property to be sold, and then taking deeds, and has made valuable improvements. The property has become very valuable, not from any labor, expenditure or exertion of the complainant. It is the policy of this new State that titles should be quieted. The growth and improvement of the State requiring this policy, the legislature have wisely limited the time for bringing ejectments to ten years. Clark, the controlling officer of the Insurance company, had notice, by his agent, and a stockholder of the company, that Rogers was in possession fifteen years before this bill was filed. From these facts, this bill should not be maintained against Rogers at this late day. From the delay in bringing suit, after the notice that Rogers was in possession, claiming title to the land not considered worth the costs of a suit, the demand may be considered as abandoned or stale. In this respect this case somewhat resembles the case of *McKnight* vs. *Taylor*, 1 Howard, 161; in which it was remarked by the Court—"In relation to this claim, it appears that nineteen years and three months were suffered to elapse before any application was made for the execution of the trust by which it had been secured. No reason is assigned for this delay, nor is it alleged to have been occasioned, in any degree, by obstacles thrown in the way of the appellant. If, indeed, this suit had been postponed a few months longer, twenty years would have expired, and in that case, according to the whole current of authorities, the debt would have been presumed to be paid. But we do not found our judgment upon the presumption of payment; for it is not merely on the presumption of payment, or in analogy to the statute of limitations, that a court of chancery refuses to lend its aid

to stale demands. There must be conscience, good faith and reasonable diligence, to call into action the powers of the court. In matters of account, where they are not barred by the act of limitations, courts of equity refuse to interfere after a considerable lapse of time, from considerations of public policy; and from the difficulty of doing entire justice when the original transactions have become obscure by time, and the evidence may be lost. The rule upon this subject must be considered as settled by the decision of the court in the case of *Piatt* v. *Vattier*, 9 Peters, 416; and that nothing can call a court of chancery into activity but conscience, good faith and reasonable diligence; and when these are wanting, the court is passive and does nothing, and therefore, from the beginning of equity jurisdiction there was always a limitation of suits in that court." The demand is not to be favored, even for the amount actually loaned, on account of the circumstances attending the negotiation, and for the reason of the delay in either redeeming the land from Rogers, or instituting proceedings for such redemption. In this case, on the part of the complainant, there is a want of conscience, of good faith, and of reasonable diligence; and upon the principle and spirit of the statute of limitations, and also of the policy of the country, this claim should not, at this late day, be enforced in a court of equity, against Rogers.

This suit was sought to be maintained on the ground that the equity of redemption of the Cleveland Insurance Company was not barred by the foreclosure of the Finch mortgages, as it was not made a party defendant on the record of these cases. If this complainant had been nominally made a defendant in those cases, there would be no doubt of its foreclosure by those decrees, of all equity of redemption as a subsequent mortgagee, even if the proceeding had been against it, by a newspaper publication of a rule to appear and plead, answer or demur, according to the statute. Why Edmund Clark was made a defendant, and the Cleveland Insurance Company was omitted, cannot be accounted for, unless from the nature of the several conveyances and the active agency of Clark in the negotiation, it was supposed that the mortgage was taken nominally in the name of the company for his use. In the whole business the name

of the company only appears as payee of the notes and as mortgagee. The business was transacted by Clark, without authority from the directors of the company, by a vote of the corporate body. There is no pretence that the directors entered on the minutes or records of the corporation any resolution or order authorizing Clark to consummate the negotiation by those deeds to and from himself, and to take the mortgage in the name of the company for double the sum actually loaned. Clark swears "that he did not know whether it was the funds of the company or his own funds that were advanced to Reed, and also, that if the company would not advance the money he would." From a subsequent examination of the books of the company and of memoranda, it may be inferred that the money advanced was the funds of the corporation. Be this as it may, Clark was the President of the company, the owner of the principal part of the stock, and the business man of the company. Under these circumstances, it was quite convenient for him to take a mortgage in the name of the corporation to secure a debt of his own, particularly in such an unconscientious transaction. He had the controlling power in the company. If he consulted the directors, it was but mere matter of form. He was the company for all business purposes, and he testifies that he and the company had notice by their agent one or two years after the sale to Rogers, that Mr. Rogers was in possession of the mortgaged premises claiming title. If Rogers was claiming title, either by virtue of his purchase under the decrees of foreclosure of the Finch mortgages, or by purchase at sales for taxes, it was the duty of the Cleveland Insurance Company, by its officers or agents, upon the receipt of the notice, to have redeemed the land from those sales. They at the same time had notice that the land was not considered worth over ten dollars per acre, which would not warrant the expenses and disbursements required for redemption. Under these circumstances it would not be equitable or just to decree, at this late day, after the land has become valuable, that Rogers' title and possession should be disturbed, for the mere omission of the Cleveland Insurance Company as a nominal defendant in the bills and proceedings to foreclose prior mortgages.

If the Finch mortgages had been foreclosed by a newspaper advertisement and sale, in pursuance of authority in the mortgages, the Cleveland Insurance Company would have been entitled by law to redeem within two years. By the law then in force, the mortgagor had two years time to redeem from such sale; and "any person to whom a subsequent mortgage may have been executed, shall be entitled to the same privilege of redemption to the mortgaged premises, that the mortgagee might have had, or of satisfying the prior mortgage; and shall by such satisfaction acquire all the benefits to which such prior mortgage was or might be entitled." And the law directs that if the mortgaged premises so sold shall not be redeemed, the officer making such sale shall make a deed to the purchaser. And if there is an overplus of purchase money on hand, it shall be retained for subsequent incumbrances.

In the proceedings in court to foreclose the Finch mortgages, Clark, as a non-resident not served with process, was entitled by law to three years' time to come in and petition the court to open the decree as to him, for the use of the insurance company. But by the law, if such application be not made, the decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making the decree. And by law, land sold under execution was redeemable by the owner within two years after the sale; and a creditor by judgment or decree could acquire the interests of the purchaser within three months after. These several laws are rules of property, strictly observed as to time in all cases; and they are also laws of limitation. They fully demonstrate the policy of the State in regard to sales of land for the payment of debts. In the absence of laws limiting suits and proceedings in equity, the laws of limitation as to similar demands in courts of law, are considered as rules proper to be observed in courts of chancery. From analogy to these laws, it is questionable whether a subsequent mortgagee, not named as a party in a bill to foreclose a prior mortgage, shall be allowed to redeem after two years. I am aware that the opinion prevails, that such redemption cannot be denied, as the person claiming it was no party to the proceedings in court. The opinions of some courts favor this idea. But in several of the States a proceeding in court, and a decree against the prior mort-

gagor and *terre tenant*, are sufficient to bar all subsequent incumbrances. The proceedings in court are open; the advertisement and sale are supposed to be known to all persons interested, who should attend the sale and bid up the property to cover their liens. Every person is expected to look after his mortgages and liens, within a reasonable time. But whether a subsequent mortgagee should be limited in equity to redeem within two years, by analogy to the statute referred to, I need not now determine. But that he should redeem within a reasonable time, there is no doubt. The company, through its officers and agents, had notice of Rogers' possession under claim of title within two years after his purchase at the master's sale in the foreclosure of the Finch mortgages. Inquiry should then have been made into his right to possession and claim of title; and the land should have been redeemed from the sale within the two years, or a reasonable time after. The complainant was under no disability to proceed on its mortgage, nor has Rogers done any act to delay or prevent a redemption or sale of the land. The complainant has done no act to enhance the value of the land, while Rogers has. The complainant cannot be allowed to profit by the delay, at Rogers' expense. For these reasons the court will not order a decree on this bill, that would disturb the possession or title of Rogers; or require him to pay the sum, with interest, advanced to George Reed.

James H. Rogers disclaims title to, or interest in lots two and three in section twenty-one, or in any undivided interest in those lots; consequently there is no decree to be ordered against him as to them. George Reed was discharged from his debt under the late bankrupt law; and he is thereby released from all personal responsibility or liability on the notes and mortgage. The Milwaukee and Mississippi Railroad Company, I presume, was made a defendant, for its claiming the right of way through section thirty. There are no parties, then, that a decree could be made against, in regard to the thirty-six acres in section twenty-one. But if that land was sold under a decree in the case of Increase A. Lapham, as set forth in Rogers' answer, I presume the complainant has no claim of lien against it. If so, the bill will be dismissed as to both tracts. Bill dismissed.